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Correspondence

Between Lieut.-Governor McInnes and Honourable C. Semlin, Premier,

In respect to the Dismissal of the Semlin Government.

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Lieut.-Gov. McInnes to Hon. Mr. Semlin.

Government House,
Victoria, B.C., Feb. 27th, 1900.

To the Honorable Charles A. Semlin,
Premier of the Province of British Columbia:

Sir,—In reply to the request made by you at last night's interview for a further postponement of the report that you promised to make to me last Friday evening regarding your defeat in the Legislative Assembly, and in reply to the representations that you made at the said interview that you still retained the confidence of the Assembly, and would be able to demonstrate the same, I regret to inform you that I do not see my way clear to continue to be guided by your advice. Circumstances have occurred during the last nine months, and more particularly during the last five months, to materially weaken the confidence that I had in your advice—circumstances quite apart from the fact of your having lost the confidence of the Legislative Assembly. The said circumstances consist chiefly in the following facts:

1. For nearly a year past—more accurately, from the 9th March last—you have not surrounded me with a full Executive Council, as provided and intended by section 10 of the Constitution Act, as amended in 1899, which reads as follows:

"The Executive Council of British Columbia * * * * shall include the following officials, namely: a Provincial Secretary, Attorney-General, Chief Commissioner of Lands and Works, Minister of Finance and Agriculture, Minister of Mines, and President of the Council, of whom not more than five shall receive salary."

That is to say: I am entitled to the advice, and the province is entitled to the services, of six officials as above provided, and while I do not mean to say that advice tendered by a less number may not be acted upon, or that a member of the Executive Council may not fill any two or more of the distinct offices above named, I think such circumstance is warranted merely as a temporary expedient, pending the selection of an officer, or officers, to complete the statutory number, for, even in England, where there is no such thing as a Constitution Act to define or limit ministerial offices—where the Queen in Council has unlimited authority to create, regulate, or abolish such offices—"such arrangements (the combination of two offices in the hands of one person) are merely provisional, and are set aside whenever their temporary purpose has been fulfilled, or the exigencies of the public service require it." (Todd's Parliamentary Government in England, Vol. II., 2nd Ed., page 211.)

On the same page will be found reference to the case of the Duke of Wellington having, in 1834, assumed charge of the Home, Foreign and Colonial Offices, pending the completion of a new administration, in regard to which it is said:

"This proceeding, though confessedly merely provisional, and only intended to secure Sir Robert Peel upon his arrival a freedom of choice in the filling up of his ministry, was severely criticised at the time. Regarded as a temporary expedient, it could not be pronounced unconstitutional, although, if resorted to under other circumstances, it might lead to serious abuses."

And at the same time that the Honorable Mr. Cotton assumed the office of Chief Commissioner of Lands and Works, in addition to his duties as Minister of Finance and Agriculture, I certainly understood that it was to be a mere temporary arrangement. But you have prolonged this condition of affairs indefinitely—nearly twelve months have elapsed without your having at any time during that period indicated to me your having made any effort to fill the vacant position. Now it may be that the Honorable Mr. Cotton is quite competent to properly discharge the duties of both positions, apart from the constitutional objection, although they entail the administration of the two heaviest departments of the government, but the condition of affairs referred to in my letter to you of the 19th October last, and referred to hereafter, lead me to think otherwise.

2. On the 30th August last I wrote you as follows:

"A week having elapsed since my last interview with you, in which I requested that a session of the Legislative Assembly be called for not later than the 20th October next, and not having received a reply as to the decision of yourself and colleagues on the subject, I desire to commend it once more to your early consideration. I do not think that I should any longer ignore the existing political conditions in the province, and the unrest and uncertainty resulting from recent political changes--changes which it will not be necessary to specify. It is sufficient, I think, that grave doubt now exists as to whether your administration retains the confidence of the Legislative Assembly. And for this reason I believe it to be my duty to insist that you either meet the Legislative Assembly on or before the 20th day of October next, as at first suggested, or that the Legislative Assembly be dissolved, and a general election be held on or before the said date."

I yielded, however, to the representations of yourself and colleagues as to the inexpediency of calling a session earlier than January, and the alternative offer of a dissolution was not accepted. But your letter to me of the 2nd September last stated:

"I hasten to assure Your Honor that the Council has the utmost confidence that it will be able to satisfy you that there is no cause for apprehension respecting the general political conditions now existing in the province. As regards the relations of the government to the Legislative Assembly, I have no reason to believe that the government will not command a majority of the House."

Subsequent events have demonstrated that your assurances were not well founded.

3. On the 18th October last I was asked to sign three special warrants, as follows:

1. The improvement of the trail from Hope to Summit City, $1,000. 2. The improvement of the South Vancouver trunk road $10,000. 3. The erection of a court house at Rossland, $45,000.

The latter amount being three times larger than that authorised by the legislature.

The appropriations made by the legislature for the above-named public works had been allowed to lapse, owing, as Mr. Cotton reported, to the fact that it was found in the first case "impossible" to expend the amount before the end of the fiscal year, ending June 30th, 1899; in the second case "impossible" to expend the amount voted before the said period, owing to the "dilatoriness" of the Municipal Council of South Vancouver; and in the third case "impracticable" to expend the amount voted. I thought then, and still think, that the said appropriations had been allowed to lapse because Mr. Cotton was unable to properly superintend and administer the business of the two departments of which he had been in charge for four months before the fiscal year expired. And it is also to be noted that it was not until the middle of October that Mr. Cotton was ready to undertake any expenditure in connection with the said public works. Thus the intentions of the legislature were not carried out, and there was direct loss, particularly in the districts concerned. I did not sign the said warrants, as it appeared perfectly clear to me, for reasons set forth in my letter to you of the 19th of October last, that such warrants were not authorised by the Revenue Act. On observing, however, that the Attorney-General had not been present at the meeting of the council at which the issue of said warrants was advised, I wrote to you as follows:

"Now, if you do not feel satisfied, on consideration, that the objections here urged against signing the said warrants are valid, let me suggest that you refer the question to the Attorney-General for a legal opinion as to whether the said warrants can, constitutionally, be issued. Should he report to me that they may be I shall be very pleased to have them again referred to me for reconsideration."

(Letter to you, 19th October last, page 4.)

To this letter and suggestion I have never received any reply. So that I was left to infer that the Attorney-General agreed that the issue of such warrants would be unconstitutional, and that had I followed the advice tendered me by the Executive Council I would have signed special warrants without any lawful authority for so doing.

In this same letter of the 19th October last, I also said:

"I regret to say, therefore, that I find myself unable to approve of them (the special warrants) or of any others of a like nature. And in this connection I may say that yesterday afternoon I

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believe that I inadvertently approved of one or more special warrants of a character similar to the ones under consideration, but received a few hours earlier. I should like to have them referred to me again, as, if they are similar to the ones returned herewith, I believe that they have been improperly approved."

To this request also I have never received any reply. So that for all I know your administration has made use of special money warrants obtained from me inadvertently, and such as the Attorney-General would not say were, or could be, constitutionally issued.

4. On the 4th of December last, upon Mr. Cotton's recommendation as Chief Commissioner of Lands and Works, the Executive Council advised me to approve of a special warrant for $2,500 for improvements to the Provincial Home and goal at Kamloops. Mr. Cotton stated that the money was urgently required for "fire protection" purposes. In your letter to me of the 11th December last, asking me to reconsider my refusal to sign this warrant, you stated that the necessity for the expenditure of an amount like this could not possibly have been foreseen." I pointed out to you that it had been foreseen for at least a year before, as follows:

"When I was in Kamloops, over fourteen months ago, both provincial and municipal officials called my attention to the unsanitary conditions of the provincial public buildings, and strongly urged that the necessary improvements should be made as quickly as possible."

So that, although I do not for a moment question but what your statement was made in good faith, yet it was not in accord with the facts as I knew them, and the reason for the expenditure was shifted from "fire protection" purposes, as in Mr. Cotton's report, to "sanitary reasons."

5. While the Legislature was in session you advised me to make, by Order in Council, submitted on the 18th ultimo, an important change in the Mineral Act. In my letter to you of the 19th ultimo, giving my reasons for not approving of the said order, I added:

"Now, if the Attorney-General be of opinion that the government should have power to cancel such certificates, after they have been issued, I think he should refer the matter to the Legislature, and obtain its sanction to have the act amended in that respect."

And referring to this in my letter to you of the 19th instant, I said:

"The Legislature has been in session for one month since the above was written, but the Attorney-General has, so far, neither introduced, nor given any indication of introducing, a bill to amend the Mineral Act in the way that he advised me that it should be amended—that is to empower the Lieutenant-Governor in Council to cancel certificates of improvements."

This seems too much like asking me to sanction a change in the law which you hesitate to ask the Legislature to sanction. And you not only advise me to practically assume the functions of the Legislature in this instance, and that, too, while the Legislature was in session, but you did so with the full intent (which, however, I did not know at the time) of making the proposed regulations retroactive to the prejudice of a free miner's statutory right, as witness the Attorney-General's letter to me of the 16th instant, as follows:

"As my desire, as well as my duty, is to be perfectly frank with Your Honor, I may be permitted to state that, had Your Honor been pleased to approve of the Order in Council submitted to Your Honor on the 18th ultimo, I should have advised the cancellation of the certificate of improvements." (Dunlop's, page 7.)

As this matter is fully dealt with in my letter of the 19th instant to you in the matter of the Dunlop petition, I shall not enter further into it here, except to say that since the said letter was written I have learned that the certificate of improvements mentioned therein was issued to Dunlop by Mr. Kirkup, by the direction of the Minister of Mines, who acted in accordance with a decision arrived at in this matter by the Executive Council. That is to say: after you decided on a certain course, i.e., the issuance of the certificate in question, and had given instruction to a subordinate official to carry out that course, you decided upon an entirely opposite course, and sought to nullify the resulting statutory right by Order in Council, and, inferentially, threw the blame for the issuance of the certificate—if any blame there was—on a subordinate official, Mr. Kirkup; for the Attorney-General's recommendation to me in the matter was as follows:

"Whenever it appears to the Lieut.-Governor in Council that an official empowered by the Mineral Act to issue certificates of improvements has, through mistake, error, inadvertence or improvi-

dence, improperly issued a certificate of improvements, etc."

I can hardly consider this as being "perfectly frank" with me, to say nothing of the unjust inference in regard to the gold commissioner. And in regard to this Dunlop petition, you not only withhold a free miner's right, lawfully acquired under section 39 of the Mineral Act, but you have not complied with the direction in my letter to you of the 19th inst., namely, to issue forthwith a Crown grant to the petitioner Dunlop, in accordance with section 39 of the Mineral Act.

Apart from this, I cannot ignore the fact that the Legislative Assembly has now been in session for nearly two months, and notwithstanding the confidence you expressed in your letter to me of the 2nd September last, above quoted, you have not been able to pass a single measure, and I believe it to be now sufficiently demonstrated that the interests of the province have suffered, and are suffering, in consequence of a weak and unstable government. Therefore I now deem it my duty to consult other advisers, with a view to forming a new administration, and shall accordingly do so forthwith.

I have only to add that in so far as any permission is needed on my part you are at perfect liberty to now lay this communication before the House for its information.

I have the honor to be,
Sir, your obedient servant,

THOS. R. M'INNES,
Lieutenant-Governor

Hon. Mr. Semlin to Lieut.-Gov. McInnes.

Seeing that His Honor has taken the initiative in giving publicity to his "reasons" for dismissing his advisers, I beg leave to trespass on your space with my reply, and ask only that it shall receive equal prominence.

C. A. SEMLIN.

Victoria, B.C., Feb. 28th, 1900.

To the Honorable T. R. McInnes, Esq., Lieut.-Governor of British Columbia.

Sir: I have the honor in replying to Your Honor's letter of the 27th, in which you state that you have no longer confidence in the advice of my colleagues and myself, to state as follows: That many of the reasons assigned seem to me to be merely matters of departmental administration, matters upon which we believed we were to advise Your Honor, rather than to be instructed by Your Honor.

1. In paragraph 1, Your Honor claims that I have not given you the benefit of a full council since the 9th of March last, and you refer me to the act of 1899 to substantiate your position. The act referred to, as quoted by Your Honor, enacts that the council shall consist of a provincial secretary, attorney-general, chief commissioner of lands and works, minister of finance and agriculture, minister of mines and president of the council.

All of those positions were filled. It is true that one minister held and performed the duties of two positions, but I am not aware that Your Honor ever intimated that your council or that the country ever suffered from this cause.

2. Your Honor further refers to the assurance given by me in September last, that I did not doubt when the House met in January that I could depend upon a majority of the members to support my government. I think, sir, that the fact of the House having been in session nearly two months and the government having commanded the majority until Friday last, when, by a peculiar combination, a majority of one was for the first time recorded against it, is proof that I did not overrate the ability of the government in its relation to the Legislative Assembly.

3. In reply to the charges set forth by Your Honor in paragraph 3, I beg to quote the following, from a letter written by the Honorable Mr. Cotton, Chief Commissioner of Lands and Works, on the subject:

"In reference to paragraph 3, respecting three special warrants which His Honor refused to sign, the facts are very simple. The improvement of the trail from Hope to Summit City, for which $1,000 was appropriated by the Legislature, was ordered by the Chief Commissioner to be carried out in ample time for its completion before the lapse of the appropriation. Owing, however, to the scarcity of men and the unusually wet season, there was unexpected delay.

"In regard to the $10,000 to the improvement of the South Vancouver trunk road, the department lost no time in attending to the carrying out of the work. The Chief Commissioner had a meeting in Vancouver with the road superintendent for the district, the mayor of Vancouver and the reeve of South Vancouver, both of these officials being interested in the enterprise. It was then decided that the municipal authorities of South Vancouver should repair and improve the road, and that the government should then expend the appropriation by gravelling the road when so prepared. The South Vancouver authorities did not, however, carry out their work with the promptitude that was anticipated, and the result was that the completion of the work by the government exceeded the time in which the appropriation was available.

"The third item, for the cost of construction of the court at Rossland, included a considerable sum in excess of the amount appropriated by the Legislature, because, after the adjournment of the latter, the government found that the growth of business at Rossland made it judicious to erect a larger and more substantial building than the government had previously intended, and it was important that the matter should not be delayed for twelve months until the present session of the Legislature.

"His Honor's assumption that the said appropriations had been allowed to lapse, because Mr. Cotton was unable to properly superintend and administer the two departments of which he had been in charge, the records of the department and the reports of the public works engineer will show that all these matters had both prompt and complete attention at the hands of the Chief Commissioner.

"In reference to the facts that these warrants were not again submitted to His Honer, I may say that, as the matter entirely depended on the manner in which the section of the Revenue Act should be construed, and as on a similar case in 1898 His Honor had taken a certain position, notwithstanding that the then Attorney-General had given a contrary opinion, the executive council considered it would be putting His Honor to unnecessary trouble to ask him to reconsider his decision, and that the best way would be to ask the Legislature to vote the amounts at the next session, although such delay caused inconvenience to the department and some injury to the public interests. But even this was thought to be preferable to asking His Honor to reverse the decision in which he had arrived in regard to the similar case which occurred just previous to the dismissal of Mr. Turner, and on which the then Attorney-General, Mr. Eberts, took a view directly contrary to that held by His Honor."

4. In reference to the special warrant of $2,500 for improvement to the Provincial Home, Your Honor insists that this could have been foreseen, as the urgent necessity for this work had been pointed out to you the year before. What stronger admission is wanted of the necessity for the warrant that Your Honor declined to approve? As to the charge of shifting from "fire protection" to "sanitary necessity," I beg to say that the amount asked was for both these much needed purposes, and the fact that I mentioned "sanitation" and Mr. Cotton "fire protection," did not make the amount the more or less necessary.

5. In reply to the charges set forth by Your Honor in paragraph 5, I beg to quote the following from a letter written by the Hon. Mr. Alexander Henderson:

"His Honor states (paragraph 5) that while the Legislature was in session you advised me to make, by Order-in-Council, submitted on the 18th ultimo, an important change in the Mineral Act. Permit me to say that this statement is misleading. No change in the act was proposed, but a regulation which was considered by me to be within the power of the Lieutenant-Governor-in-Council to pass.

"Upon the question of the regulation referred to, it is plain that if a certificate of improvements is issued in mistake by any officer, or otherwise improvidently, a power should exist somewhere of rectifying that mistake.

"As the Mineral Act stands, no express provision exists upon the subject. There is, however, a section (143) which states that 'The Lieutenant-Governor-in-Council make such orders as are deem-

ed necessary from time to time to carry out the provisions of this act according to their true intent, or to meet the cases which may arise, and for which no provision is made in the act, or when the provision which is made is ambiguous or doubtful; and may further make and declare any regulations which are considered necessary to give the provisions in this clause contained full effect.' I was of the opinion that under this section a regulation might be framed which would give the power to the Lieutenant-Governor-in-Council to recall a certificate of improvements which had been improvidently issued. I consider that the words of the section quoted were large enough to include this power, but as the matter was one of statutory construction, upon which legal opinions might differ, I thought it wise to take other advice, and consequently consulted a counsel of standing in his profession in Victoria upon the point. The counsel referred to agreed with my opinion.

"In these circumstances the government concluded that a regulation could be framed under this section (143) which would meet the defect in the act. It may be observed here that if the regulation had been put in force no one's rights could have been lost. If the power to pass it was given by the statute, then the regulation would be effective.

"If the regulation transcended the powers given to the executive by the statute, it would be held ultra vires by the courts.

"Granting that the power to deal with this subject by regulation existed and that there was a necessity for some provision being made, the question whether that provision should be the subject of a regulation, or should be a matter of statute to be submitted to the House, was one entirely of government policy, and with which His Honor has no right to interfere. The government is responsible for its policy directly to the House. It could not justify an action contrary to its own ideas of what ought to be done by stating that it was carried out at the wish of the Lieutenant-Governor.

"Theoretically the Lieutenant-Governor controls the executive, but that notion is only an abstraction, and for him to interfere by an attempt to direct the details of the policy of the government is as meddlesome and unwarrantable as if he were to present himself at the meetings of the executive council and insist on seating himself at the board, on the ground that all Orders-in-Council are supposed to be passed by him, and are issued under his signature.

"It is not, therefore, necessary to discuss with His Honor whether the proposed action under this Order-in-Council was correct or not upon the merits. His Honor, is not, I submit, concerned with that subject. It is one which the ministers would be obliged to explain to the House if the question arose there. Again, His Honor is not accurate in stating that the certificate of improvements in question was issued by the direction of the Minister of Mines. The gold commissioner was not relieved of any responsibility in the matter. He was expected to exercise the same care and to take the same precaution in this as he would do in any other case. He may have misunderstood, and probably did misunderstand, the letter of the Minister of Mines, but the concluding words of the gold commissioner's letter left grave doubts in the minds of the executive as to whether Mr. Kirkup had not made a mistake in issuing the certificate.

"The words I alluded to are the following: 'I considered that I was justified in issuing the certificate of improvements, and leave the matter in the hands of the department as to whether a Crown grant will issue or not.'

"His Honor further states as follows: 'In regard to this Dunlop petition you not only withhold a free miner's right lawfully acquired under section 39 of the Mineral Act, but you have not complied with the direction in my letter to you of the 19th inst., namely, to issue forthwith a Crown grant to the petitioner Dunlop in accordance with section 39 of the Mineral Act.'

"Apart from the question of His Honor's right to consider a petition of this kind, and the fact that His Honor appears to have come to a conclusion without giving the other claimant (Haney) an opportunity of being heard, I beg to present for His Honor's consideration that the issuance of the Crown grant is either a matter of statute or of government policy. There is no statute which requires the government at any time to issue a Crown grant of a mineral claim to any person. It is the practice to issue a Crown grant in proper cases, but whether or not any particular case is a proper one is a detail of the government policy which the ministers have to decide.

"I respectfully submit that an inter-

ference in a case of this kind by a Lieutenant-Governor betrays a lack of comprehension of the principles of constitutional government."

Your Honor is good enough to say that notwithstanding the confidence you expressed in me in September last, that it is now demonstrated that the country is suffering from a weak and unstable government. I have already shown that my letter of the 2nd of September was fully justified by the action of the House.

Last evening when I called upon Your Honor in conformity with my promise of Friday last, I assured Your Honor of my ability to command a majority of the House to-day, and this was sufficiently demonstrated when the House on a division of 23 to 15 approved a resolution expressing regret at Your Honor's action in dismissing your ministers.

I have the honor to be, sir,
Your obedient servant,

O. A. SEMLIN.